



City of Elgin

Allen Duffin
7-16-18
P.O. Box 128 - 180 N. 8th Ave. - Elgin, OR 97827
Voice : (541) 437-2253 Fax : (541) 437-0131

NOTICE

City of Elgin Oregon City Council to Conduct: Regular Council Meeting

When: Tuesday July 10th, 2018: Council Meeting 7:00pm

Where: Elgin City Hall, 180 Nth 8th Street, Elgin, Oregon 97827

For More Information, Please Contact Brock Eckstein, City Administrator/Recorder, at (541) 437-2253 or
cityadm@cityofelginor.org.

MEETING AGENDA 7:00pm:

- 7:00pm Call to Order and Flag Salute
- Roll Call:

Councilor West____ Councilor Shaffer____ Councilor Burgess____ Councilor Warren____ Councilor Reed____
Councilor Hallgarth____ Student Councilor VACANT____ Mayor Duffy____

- Revise/Approve Agenda
- Citizens May Speak About Items on the Current Agenda IF Called Upon at This Time

REPORTS

- | | |
|--|--|
| <ul style="list-style-type: none">• Law Enforcement - UC Sheriff Department• Ordinance Officer - Alex Duffy• Municipal Court - Laura Eckstein• Ambulance - Kevin Silvernail<ul style="list-style-type: none">○ Public Safety - Mayor Duffy/Councilor West and Warren• Public Works - Director Larman,<ul style="list-style-type: none">○ Councilors Burgess/Reed• Engineer's Report - JUB• Parks and Rec - Bryan Jungling• Library - Michele Timmons• Planning Commission - Brock Eckstein | <ul style="list-style-type: none">• Administrator - Brock Eckstein<ul style="list-style-type: none">○ Administration - Councilors Warren/Hallgarth• Opera House - Councilors Shaffer• Union County Chamber - Bob Kavanaugh• Chamber - Admin. Eckstein/Councilor Hallgarth• Lions Club - Mayor Duffy/Admin. Eckstein• Stampedeers - Councilor Burgess• Women's Service Club - Councilor Warren• Museum - Councilor Reed• Rail Road - David Arnold• Economic Development - Mayor Duffy• Student Council - VACANT |
|--|--|

OLD BUSINESS

Executive Session 192.660(2)(e) To conduct deliberations with persons you have designated to negotiate real property transactions.

Executive Session 192.660(2)(h) To consult with counsel concerning the legal rights and duties of a public body with-regard to-current litigation or litigation likely to be filed.

NEW BUSINESS

Calico Arms Land Purchase Agreement

Task ORG Agreement for Design of Indian Valley Utilities

CITY OF ELGIN, OREGON ORDINANCE 5 (2018) - AN ORDINANCE GRANTING TO EASTERN OREGON NET, INC. / PRIORITY ONE TELECOMMUNICATIONS, INC. A FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF ELGIN, OREGON.

Ord. no 5 2018

Elgin Activities –JUNE 2018

The Union County Deputies contributed hours to the total for the month. The statistics reflect the activities for the Sheriff's Office.

HOURS	477.5
CRIM. CITATIONS	1
TRAFFIC CITATIONS	15
WARNINGS	56
ARRESTS	4
CALLS FOR SERVICE	53
FIELD INTERVIEWS	26
WALK-INS	0
REPORTS	10
TOWS/IMPOUNDS	0
OTHER	2 noted with an * below

The above hours were allocated as follows:

PATROL	52 %	TRAFFIC ENFORCEMENT	24 %
REPORTS	4 %	INVESTIGATIONS	20 %

Activities include:

Routine patrol including foot patrol, school patrol, truck route patrol, bicycle patrol and traffic patrol

Ongoing Drug investigations and surveillance

Voluntary transport of a female with mental health issues to the hospital

Follow up on found/stolen property

Call for service for a Trespass situation

Responded to a call of Offensive Littering

*SWAT training

Call for an altercation by 3 juveniles at the city pool

Approached by an individual who stated he was threatened, located subject and counselled

Took a report of a stolen wallet, was located

Arrested one subject with a Warrant x 3

Trespassed one juvenile from all city property following an altercation

Information taken following an automobile collision

Report taken for Telephonic Harassment

Took a report of possible Unauthorized Entry to a Motor Vehicle

Assisted DHS with a home visit x 2

Arrested one subject for Criminal Trespass II

Found bicycle

Notified city shops of a sign down

Call for a possible theft issue

Report of Harassment

Investigation of a possible sex offender living with kids reported anonymously

Assisted medics with a heart attack patient

Welfare check on children, everyone was fine

Report of possible Child Neglect, unfounded

Responded to a call for Criminal Mischief, will follow up

Domestic disturbance call, verbal only
Report of a possible Theft, determined to be a civil issue
Stopped by a citizen asking questions about ATV use
Call to report a careless driver, unable to locate
*Use of Force Training
Report of a disturbance involving juveniles in foster care
Local boat inspections
Report of a cow by the road
Call of a Criminal Trespass situation at a local motel
Flagged down by a citizen about a suspicious truck in town, unable to locate
Report of suspicious individuals near Community Center, responded and spoke to individuals
Trespassed an unruly subject from a motel
Responded to a report of a cougar in city limits, unable to locate
Sex Abuse investigation and reports
Trespassed an individual from a resident after receiving a call for a civil matter x 3
Medical Assist x 2
Report of a Theft of a Firearm, possible civil situation
Call for service to report sewer overflow at the RV dump station
Driving complaint x 3
Call for service for a verbal argument x 2
Responded to a call of a noise complaint x 2
Notified Ordinance Officer of two dogs at large
Responded to a report of a disturbance at an apt complex, verbal only
Picked up a stolen safe
Report of a road obstruction, turned out to be stolen property from a burglary case
Contact and disrupt a known drug house
Responded to a call of an male overdosing, assisted medics
Assisted with a commercial motor vehicle that broke down
Assisted with a vehicle accident
Responded to a report of a possible stalking situation, located subject and trespassed from area
Follow up on a Criminal Trespass investigation
Welfare check x 2
Responded to a possible domestic situation, neighbor to neighbor verbal only

Elgin 2018	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	0.00	20.00	17.50	19.00	6.00	10.00						
2	13.00	20.00	15.00	20.00	21.00	12.00						
3	10.00	15.75	23.75	15.00	40.00	19.00						
4	22.00	20.00	10.00	15.50	37.00	9.50						
5	17.50	23.00	24.00	30.00	30.25	19.50						
6	22.75	10.00	10.00	22.75	13.25	27.50						
7	17.00	9.00	16.00	18.50	10.00	27.75						
8	25.00	14.50	19.00	10.00	10.00	32.00						
9	11.50	18.00	19.25	20.00	20.00	19.50						
10	12.00	10.00	16.00	20.00	17.50	15.00						
11	17.50	18.50	21.25	11.00	18.00	10.50						
12	21.00	14.00	11.50	20.50	18.25	1.00						
13	20.25	11.00	16.00	14.00	18.00	0.00						
14	20.50	18.00	18.00	1.00	10.00	22.75						
15	12.50	24.00	21.00	16.50	1.00	17.00						
16	14.00	20.00	21.25	29.00	16.00	20.00						
17	6.50	14.00	14.00	19.00	18.25	25.00						
18	4.00	11.00	24.00	15.50	25.00	11.00						
19	10.00	20.00	21.50	18.50	10.00	13.50						
20	10.00	14.00	7.50	24.50	15.00	16.25						
21	10.00	14.00	16.50	21.00	9.00	11.25						
22	13.50	19.50	25.00	16.00	0.00	16.75						
23	15.00	17.50	23.75	10.00	15.00	12.00						
24	10.00	18.50	15.00	5.00	18.00	10.00						
25	28.50	23.00	14.50	15.00	8.00	3.50						
26	13.50	20.00	12.00	22.00	3.00	12.00						
27	10.00	13.00	13.00	22.50	1.50	12.00						
28	30.25	10.00	13.00	9.50	0.00	27.50						
29	24.00	0.00	15.50	16.50	10.00	22.25						
30	10.00	0.00	22.50	10.00	12.50	21.50						
31	3.50	0.00	11.75	0.00	28.50	0.00						
Total	455.25	460.25	529	507.75	460	477.5	0	0	0	0	0	0

	420	420	420	420	420	420	420	420	420	420	420	420
Over/Shor	35.25	40.25	109.00	87.75	40.00	57.50	(420.00)	(420.00)	(420.00)	(420.00)	(420.00)	(420.00)

Monthly Council Report
July 2018
Library

Heidi Muller and Bob Webb were the Folk music and instrumentalists that came in June. For those of you that missed it, they were AWESOME. Community Bank Donated water bottles for that night's entertainment.

Summer Reading Program has started out with very good attendance, children and adults have been joining in on all the fun. All our guests have been very entertaining.

Storytime will be Every Wednesday afternoon starting June 27th at 2:30 Pm and continue through July 25th.

July 17th there will be a basket weaving class starting at 2 PM. Fee is \$25 and 10% of the proceeds will go to benefit the library.

July 18th there will be an Essential Oils Class at 3:30 pm.



Monthly Administrator Report

Mr. Mayor and City Councilors,

- LOC Reservations
 - Valley River Inn for Lodging
- Filing/Re-Filing for Seats
- Office Update
- OLCC License Approval
- Drill Dates:
 - JUL 18 – AUG 3, NOT Available by Phone
- \$71,000 From Boise Cascade Confirmed

Brock Eckstein

City Administrator

Brock Eckstein

From: CIS (Citycounty Insurance Services) <cis@cisoregon.org>
Sent: Monday, July 02, 2018 4:39 PM
To: cityadm@cityofelginor.org
Subject: CIS: Elgin Loss Run Report(s) as of 6/30/2018

Dear Brock,

Below is a summary of claims and financial activity for P/C Trust coverage with CIS during June, 2018.

[Click here](#) to log on to the CIS website and view loss run reports.

Line of Business	New Claims	Closed Claims	Paid During Last Month	Reserves Change Last Month
Elgin				
Auto Liability	0	0	\$0.00	\$0.00
Auto Physical Damage	0	0	\$0.00	\$0.00
General Liability	0	0	\$0.00	\$0.00
Property	0	0	\$0.00	\$0.00
Workers' Compensation	0	0	\$0.00	\$0.00

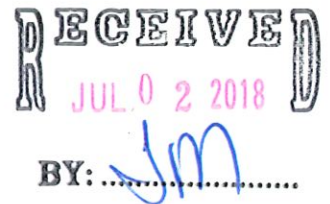
Other contacts from your organization receiving loss run information:

- Lessa Adams - Both P/L & WC

If you have any questions or comments, please reach out to me.

Thank you,

Trent McGath
CIS Risk Information Manager
tmcgath@cisoregon.org
Office: 503.763.3896



City of Elgin
ELGIN
PO Box 128
Elgin, OR 97827

RENEWAL NOTIFICATION PROCESS

It's time again for liquor license renewals in your area. Liquor licenses are due to expire **9/30/2018**. Attached is the list of licensees who are required to submit their renewal application to local government for comment. According to our records you charge:

\$10.00 Renewal Fee for ON-PREMISES \$10.00 Renewal Fee for OFF-PREMISES

We told applicants to mail your local government fees to the address on this letter.
PLEASE NOTIFY US IMMEDIATELY IF THE FEE(S) OR ADDRESS ARE INCORRECT

HOW TO MAKE A RECOMMENDATION

You have until 8/30/2018 to make your recommendation. Below are your options for renewals:

RECOMMEND APPROVAL

1. **DO NOTHING.** If you do not submit a recommendation by **8/30/2018**, the OLCC will process the renewal application as a favorable recommendation.

RECOMMEND DENIAL (see additional information on page 2)

1. File an unfavorable recommendation, stating the grounds for the unfavorable (must meet the denial criteria on back of form); **OR**
2. Make a written request for additional time to complete an investigation. The request must state: 1) you are considering making an unfavorable recommendation; 2) the specific grounds being considered. **The grounds must be one referenced in Oregon Administrative Rule 845-005-0308(3).** If your request is granted you will be given a 45-day extension to file your unfavorable recommendation. Unfavorable means recommending denial of a license or requesting restrictions be placed on a license.

If you need assistance or would like to discuss a specific application, please contact your local OLCC office for help. Please send renewal recommendation correspondence to OLCC.Renewals@oregon.gov or OLCC License Renewals, P.O. Box 22297, Portland, OR 97269-2297. If you have questions, contact our license renewal section at 503.872.5138 or toll free at 1.800.452.6522 ext 25138.

REASONS WE MAY DENY OR RESTRICT A LICENSE
ORS 471.313(4)(5), OAR 845-005-0320, 845-005-0321, 845-005-0322
845-005-0325, 845-005-0326(4)(5) or 845-005-0355

The following is a list of problems relating to the **APPLICANT** or **BUSINESS** that OLCC can consider to refuse or restrict a license:

1. Applicant has a habit of using alcohol or drugs to excess
2. Applicant makes a false statement to OLCC (must be related to a refusal basis)
3. Applicant has been convicted of local, state or federal laws that are substantially related to the fitness of holding a liquor license
4. Applicant has demonstrated poor moral character
5. Applicant has a poor record of compliance when previously licensed by OLCC
6. Applicant is not the legitimate owner of the business
7. The business has a history of serious and persistent problems at this location. The problems can include:

obtrusive or excessive noise, music or sound vibrations
public drunkenness
fights or altercations
harassment
unlawful drug sales
alcohol or related litter

OLCC is not able to consider the following issues when deciding to renew a liquor license:

lack of parking
increase in traffic
too many licenses in a specific area (saturation)
entertainment type - nude dancing, gambling, live bands, etc.
increased noise
zoning issues

Visit www.oregon.gov/olcc/ to see the full text of ORS and OAR referenced above. In order for an unfavorable recommendation from a local government to be valid, the grounds must be found in the license refusal bases of ORS 471.313(4), 471.313(5), OAR 845-005-0320, 845-005-0321, 845-005-0322, 845-005-0325 or 845-005-0326(4)(5) or the license restriction bases of OAR 845-005-0355, and must be supported by reliable factual information.

<u>License No./ Premises No.</u>	<u>Tradename/Licensee/License Type</u>	<u>Premises Address & Phone</u>	<u>Premises Mailing Address</u>
Lic. 262075 Prem. 56250	EAGLE CAP EXCURSION TRAIN FRIENDS OF THE JOSEPH BRANCH L - LIMITED ON-PREMISES SALES	300 DEPOT ST ELGIN, OR 97827 541-437-3562	PO BOX 422 ENTERPRISE, OR 97828
Lic. 260500 Prem. 28091	ELGIN CHEVRON SHOP N GO BYRNES INVESTMENTS LLC O - OFF-PREMISES SALES	785 ALBANY ST ELGIN, OR 97827 541-437-3777	PO BOX 700 PENDLETON, OR 97801
Lic. 260736 Prem. 6478	ELGIN CORNER MARKET ELGIN CORNER MARKET LLC O - OFF-PREMISES SALES	93 S 8TH AVE ELGIN, OR 97827 541-437-2491	67310 SHAW CREEK RD ELGIN, OR 97827
Lic. 261834 Prem. 6046	ELGIN FOOD TOWN INC WESTERN FOODS INC O - OFF-PREMISES SALES	1480 DIVISION ELGIN, OR 97827 541-786-3659	PO BOX 205 ELGIN, OR 97827
Lic. 261848 Prem. 10109	O & M GAS & GROCERY MICHAEL W. PERRY O - OFF-PREMISES SALES	395 ALBANY ELGIN, OR 97827 541-437-3521	
Lic. 262889 Prem. 6479	THE BRUNSWICK RESTAURANT & LOI BRENDA J. REID F-COM - FULL ON-PREMISES SALES	52 N 8TH ST ELGIN, OR 97827 541-910-6531	PO BOX 327 ELGIN, OR 97827

Count for ELGIN

6

SALE AGREEMENT

DATE: _____, 2018

SELLER: CITY OF ELGIN
180 N. 8th Avenue
P.O. Box 128
Elgin, OR 97828

BUYER: CALICO LIGHT WEAPONS SYSTEMS, INC.
1090 Hemlock Street
P.O. Box 640
Elgin, OR 97828

Recital

Seller desires to sell to Buyer and Buyer desires to purchase from Seller all of Seller's interest in certain real property with all improvements located on it in Union County, Oregon, having the legal description as shown in Exhibit 1 attached hereto (the "Property"):

Terms and Conditions

Now, therefore, for valuable consideration, the parties agree as follows:

1. **Sale and Purchase.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of \$35,000.00 (the "Purchase Price").

2. **Payment of Purchase Price.** The Purchase Price will bear interest at the rate of 3.5 percent per annum from the Closing Date and must be paid to Seller in accordance with the terms of a promissory note with Seller as payee and Buyer as maker, as follows:

(1) Buyer will pay Seller equal monthly installments of \$346.10 each, which includes the annual rate of 3.5 percent, with the first of such installments to be paid on or before November 1st, 2018, and each subsequent installment to be paid on or before the first day of each month thereafter until and including September 1st, 2028.

(2) Buyer will pay Seller the entire unpaid balance of the Purchase Price, plus any accrued interest thereon, and all other sums due Seller hereunder, on or before November 1st, 2028.

(3) Buyer may prepay all or any portion of the unpaid balance of the Purchase Price at any time without penalty or premium. Any prepayments must be applied first to late charges or other amounts due to Seller, if any, then to interest,

and the balance, if any, will be applied to principal. Any portion of a prepayment to be applied to principal must be applied to the oldest installments due, and will not excuse or reduce the regularly scheduled monthly installments of principal and interest hereunder.

(4) The promissory note must be secured by a first trust deed on the Property, subject only to the Permitted Exceptions (defined below).

(5) The trust deed must provide, among other matters, that Buyer may not sell or transfer any interest in the Property or permit any lien or encumbrance to attach to the Property without the prior written consent of Seller, which consent will not be unreasonably withheld.

(6) If Tenant constructs a 4000 square foot building on the Property, Seller shall credit Tenant \$10,000 of the Purchase Price on the date the construction of the building is complete and the building is occupied.

3. Closing. Closing must take place on a mutually agreed upon date, but in no event later than August 31st, 2018 (the "Closing Date"), at the offices of Eastern Oregon Title. The terms closed, closing, or closing date mean when the deed or contract is recorded and funds are available to Seller. Each party must pay one-half of the escrow fee and one-half of any transfer taxes.

4. Preliminary Title Report. Within 10 days after full execution of this Agreement, Seller will furnish to Buyer a preliminary title report showing the condition of title to the Property, together with copies (or links to online copies if the report is furnished in digital form) of all exceptions listed therein (the "Title Report"). Buyer will have 10 days from receipt of the Title Report to review it and to notify Seller, in writing, of Buyer's disapproval of any special exceptions shown in the Title Report. Those exceptions the Buyer does not object to are referred to below as the "Permitted Exceptions." Zoning ordinances, building and use restrictions, property taxes that are not yet paid for the current tax year, and reservations in federal patents and state deeds are deemed Permitted Exceptions. If Buyer notifies Seller, in writing, of disapproval of any exceptions, Seller will have 10 days after receiving the disapproval notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes (the "Seller Assurance Period"). If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within 10 days after expiration of the Seller Assurance Period, in which event the earnest money will be promptly refunded to Buyer and this Agreement will be of no further binding effect.

5. Marketable Title; Deed. On the Closing Date, unless agreed otherwise herein, Seller will convey marketable title to the Property to Buyer by statutory warranty deed, free and clear of all encumbrances, except for the Permitted Exceptions.

6. **Title Insurance.** Within 30 days after closing, Seller must furnish Buyer with an American Land Title Association owner's policy of title insurance in the amount of the purchase price, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

7. **Taxes; Prorates.** Real-property taxes for the current tax year, insurance premiums (if Buyer assumes the existing policy), and other usual items must be prorated as of the Closing Date. Buyer will pay Seller for remaining heating fuel, if any, at the then-current rate, as of the Closing Date.

8. **Possession.** Buyer will be entitled to possession immediately on closing.

9. **Insurance.** Seller will insure the Property through closing against the losses typically covered by a homeowner's insurance policy.

10. **Representations.** Subject to Seller's written representations contained herein, and any statutory property disclosures given as part of this transaction, Buyer acknowledges that Buyer has accepted and executed this Agreement on the basis of Buyer's own examination and personal knowledge of the Property; that Seller and Seller's agents have made no representations, warranties, or other agreements concerning matters relating to the Property; that Seller and Seller's agents have made no agreement or promise to alter, repair, or improve the Property; and that Buyer takes the Property in its present condition "AS IS."

11. **Binding Effect/Assignment Restricted.** This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns. Nevertheless, Buyer will not assign its rights under this Agreement without Seller's prior written consent, which may not be unreasonably withheld by Seller.

12. **Remedies.** TIME IS OF THE ESSENCE OF THIS AGREEMENT. If Buyer fails or refuses to close this transaction, through no fault of Seller, or if Seller fails to deliver the deed described in section 5 above on the Closing Date or otherwise fails or refuses to close this transaction, through no fault of Buyer, this Agreement will be of no further effect, and the parties will be free of any further obligations under this Agreement. The parties agree it is their intention each party will retain all available remedies for breach of contract, including but not limited to the right of specific performance.

13. **Attorney Fees.** If an action is instituted to enforce or interpret any term of this Agreement, the prevailing party will recover from the losing party reasonable attorney fees incurred in the action as set by the trial court and, in the event of appeal, as set by the appellate courts.

14. **Notices.** All notices and communications in connection with this Agreement must be given in writing and will be transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set forth above. Any notice so transmitted will be deemed effective three days after the date it is placed in the United

States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

15. Brokers. Each party warrants that no broker or finder was consulted or engaged in connection with this transaction. Each party will indemnify, defend, and hold harmless the other from and against all claims, losses, and liabilities made or imposed for any commission or finder's fee to any other broker or agent arising out of the actions of such party.

16. Time for Performance. When the last day for performance of an act by a party falls on a Saturday, Sunday, or legal holiday, the performance of the act shall be considered timely if it is performed on the next day that is not a Saturday, Sunday, or legal holiday.

17. Severability. If any provision of this Agreement is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be impaired in any way.

18. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

19. Amendments. This Agreement may be amended only by an instrument in writing executed by all the parties, which writing must refer to this Agreement.

20. Construction. The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."

21. Further Assurances. Each party agrees to execute and deliver such other documents and to do and perform such other acts and things as any other party may reasonably request to carry out the intent and accomplish the purposes of this Agreement.

22. Waiver. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

23. Applicable Law. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon.

24. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

25. Facsimile Signatures. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm facsimile transmitted signatures by signing an original document.

26. Acceptance. This Agreement will be and void unless accepted by Seller, by Seller's execution of it, on or before August 14th, 2018.

27. Statutory Warning. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010, ORS 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

SELLER:

BUYER:

By: _____
Its _____

By: _____
Its _____

DATED: _____, 2018

DATED: _____, 2018

EXHIBIT 1

Lots numbered Four (4), Five (5), Seven (7) and Eight (8) in ELGIN INDUSTRIAL PARK, a subdivision of a portion of the Southeast quarter of the Southwest quarter, and the Southwest quarter of the Southeast quarter of Section 15, and the Northwest quarter of the Northeast quarter of Section 22, Township 1 North, Range 39 East of the Willamette Meridian, according to the official plat thereof filed in Plat Cabinet No. B570 and 571; Microfilm No. 20002239, Records of Union County, Oregon.

AMORTIZATION TABLE



	Beginning Balance	Interest	Principal	Ending Balance	Year #3 End			
1	\$35,000.00	\$102.08	\$244.02	\$34,755.98	37	\$25,751.81	\$75.11	\$270.99
2	\$34,755.98	\$101.37	\$244.73	\$34,511.25	38	\$25,480.82	\$74.32	\$271.78
3	\$34,511.25	\$100.66	\$245.44	\$34,265.81	39	\$25,209.04	\$73.53	\$272.57
4	\$34,265.81	\$99.94	\$246.16	\$34,019.65	40	\$24,936.47	\$72.73	\$273.37
5	\$34,019.65	\$99.22	\$246.88	\$33,772.78	41	\$24,663.10	\$71.93	\$274.17
6	\$33,772.78	\$98.50	\$247.60	\$33,525.18	42	\$24,388.93	\$71.13	\$274.97
7	\$33,525.18	\$97.78	\$248.32	\$33,276.86	43	\$24,113.97	\$70.33	\$275.77
8	\$33,276.86	\$97.06	\$249.04	\$33,027.82	44	\$23,838.20	\$69.53	\$276.57
9	\$33,027.82	\$96.33	\$249.77	\$32,778.05	45	\$23,561.63	\$68.72	\$277.38
10	\$32,778.05	\$95.60	\$250.50	\$32,527.55	46	\$23,284.25	\$67.91	\$278.19
11	\$32,527.55	\$94.87	\$251.23	\$32,276.32	47	\$23,006.06	\$67.10	\$279.00
12	\$32,276.32	\$94.14	\$251.96	\$32,024.36	48	\$22,727.06	\$66.29	\$279.81
Year #1 End					Year #4 End			
13	\$32,024.36	\$93.40	\$252.70	\$31,771.66	49	\$22,447.24	\$65.47	\$280.63
14	\$31,771.66	\$92.67	\$253.43	\$31,518.23	50	\$22,166.62	\$64.65	\$281.45
15	\$31,518.23	\$91.93	\$254.17	\$31,264.06	51	\$21,885.17	\$63.83	\$282.27
16	\$31,264.06	\$91.19	\$254.91	\$31,009.15	52	\$21,602.90	\$63.01	\$283.09
17	\$31,009.15	\$90.44	\$255.66	\$30,753.49	53	\$21,319.81	\$62.18	\$283.92
18	\$30,753.49	\$89.70	\$256.40	\$30,497.09	54	\$21,035.89	\$61.35	\$284.75
19	\$30,497.09	\$88.95	\$257.15	\$30,239.93	55	\$20,751.14	\$60.52	\$285.58
20	\$30,239.93	\$88.20	\$257.90	\$29,982.03	56	\$20,465.57	\$59.69	\$286.41
21	\$29,982.03	\$87.45	\$258.65	\$29,723.38	57	\$20,179.16	\$58.86	\$287.24
22	\$29,723.38	\$86.69	\$259.41	\$29,463.97	58	\$19,891.91	\$58.02	\$288.08
23	\$29,463.97	\$85.94	\$260.16	\$29,203.81	59	\$19,603.83	\$57.18	\$288.92
24	\$29,203.81	\$85.18	\$260.92	\$28,942.89	60	\$19,314.91	\$56.34	\$289.77
Year #2 End					Year #5 End			
25	\$28,942.89	\$84.42	\$261.68	\$28,681.20	61	\$19,025.14	\$55.49	\$290.61
26	\$28,681.20	\$83.65	\$262.45	\$28,418.76	62	\$18,734.53	\$54.64	\$291.46
27	\$28,418.76	\$82.89	\$263.21	\$28,155.54	63	\$18,443.07	\$53.79	\$292.31
28	\$28,155.54	\$82.12	\$263.98	\$27,891.56	64	\$18,150.77	\$52.94	\$293.16
29	\$27,891.56	\$81.35	\$264.75	\$27,626.81	65	\$17,857.60	\$52.08	\$294.02
30	\$27,626.81	\$80.58	\$265.52	\$27,361.29	66	\$17,563.59	\$51.23	\$294.87
31	\$27,361.29	\$79.80	\$266.30	\$27,094.99	67	\$17,268.72	\$50.37	\$295.73
32	\$27,094.99	\$79.03	\$267.07	\$26,827.92	68	\$16,972.98	\$49.50	\$296.60
33	\$26,827.92	\$78.25	\$267.85	\$26,560.07	69	\$16,676.39	\$48.64	\$297.46
34	\$26,560.07	\$77.47	\$268.63	\$26,291.43	70	\$16,378.92	\$47.77	\$298.33
35	\$26,291.43	\$76.68	\$269.42	\$26,022.02	71	\$16,080.60	\$46.90	\$299.20
36	\$26,022.02	\$75.90	\$270.20	\$25,751.81	72	\$15,781.40	\$46.03	\$300.07

Year #6 End					Year #9 End				
73	\$15,481.33	\$45.15	\$300.95	\$15,180.38	109	\$4,075.53	\$11.89	\$334.21	\$3,741.32
74	\$15,180.38	\$44.28	\$301.82	\$14,878.55	110	\$3,741.32	\$10.91	\$335.19	\$3,406.13
75	\$14,878.55	\$43.40	\$302.70	\$14,575.85	111	\$3,406.13	\$9.93	\$336.17	\$3,069.96
76	\$14,575.85	\$42.51	\$303.59	\$14,272.26	112	\$3,069.96	\$8.95	\$337.15	\$2,732.81
77	\$14,272.26	\$41.63	\$304.47	\$13,967.79	113	\$2,732.81	\$7.97	\$338.13	\$2,394.68
78	\$13,967.79	\$40.74	\$305.36	\$13,662.43	114	\$2,394.68	\$6.98	\$339.12	\$2,055.57
79	\$13,662.43	\$39.85	\$306.25	\$13,356.18	115	\$2,055.57	\$6.00	\$340.11	\$1,715.46
80	\$13,356.18	\$38.96	\$307.15	\$13,049.03	116	\$1,715.46	\$5.00	\$341.10	\$1,374.37
81	\$13,049.03	\$38.06	\$308.04	\$12,740.99	117	\$1,374.37	\$4.01	\$342.09	\$1,032.27
82	\$12,740.99	\$37.16	\$308.94	\$12,432.05	118	\$1,032.27	\$3.01	\$343.09	\$689.18
83	\$12,432.05	\$36.26	\$309.84	\$12,122.21	119	\$689.18	\$2.01	\$344.09	\$345.09
84	\$12,122.21	\$35.36	\$310.74	\$11,811.47	120	\$345.09	\$1.01	\$345.09	\$0.00
Year #7 End					Year #10 End				
85	\$11,811.47	\$34.45	\$311.65	\$11,499.82					
86	\$11,499.82	\$33.54	\$312.56	\$11,187.26					
87	\$11,187.26	\$32.63	\$313.47	\$10,873.79					
88	\$10,873.79	\$31.72	\$314.39	\$10,559.40					
89	\$10,559.40	\$30.80	\$315.30	\$10,244.10					
90	\$10,244.10	\$29.88	\$316.22	\$9,927.88					
91	\$9,927.88	\$28.96	\$317.14	\$9,610.73					
92	\$9,610.73	\$28.03	\$318.07	\$9,292.66					
93	\$9,292.66	\$27.10	\$319.00	\$8,973.67					
94	\$8,973.67	\$26.17	\$319.93	\$8,653.74					
95	\$8,653.74	\$25.24	\$320.86	\$8,332.88					
96	\$8,332.88	\$24.30	\$321.80	\$8,011.08					
Year #8 End									
97	\$8,011.08	\$23.37	\$322.73	\$7,688.35					
98	\$7,688.35	\$22.42	\$323.68	\$7,364.67					
99	\$7,364.67	\$21.48	\$324.62	\$7,040.05					
##	\$7,040.05	\$20.53	\$325.57	\$6,714.48					
##	\$6,714.48	\$19.58	\$326.52	\$6,387.97					
##	\$6,387.97	\$18.63	\$327.47	\$6,060.50					
##	\$6,060.50	\$17.68	\$328.42	\$5,732.07					
##	\$5,732.07	\$16.72	\$329.38	\$5,402.69					
##	\$5,402.69	\$15.76	\$330.34	\$5,072.35					
##	\$5,072.35	\$14.79	\$331.31	\$4,741.04					
##	\$4,741.04	\$13.83	\$332.27	\$4,408.77					
##	\$4,408.77	\$12.86	\$333.24	\$4,075.53					



**TASK ORDER NO. 2018-01 FOR
MASTER AGREEMENT FOR
MISCELLANEOUS ENGINEERING SERVICES
(Indian Valley Estates Water and Sewer –
Design and Construction Phase)
CITY OF ELGIN**

City Project No. _____

Consultant Project No. 33-18-

THIS TASK ORDER, entered into this 16th day of May, 2018, between The City of Elgin, Oregon, hereinafter referred to as the CITY, J-U-B ENGINEERS, Inc., hereinafter referred to as the J-U-B, is subject to the provisions of the Master Miscellaneous Engineering Agreement for RFP issued March 14, 2017, and signed on September 25, 2017, hereinafter referred to as the AGREEMENT.

WITNESSETH:

WHEREAS, the CITY intends to Construct a domestic water distribution system and a sanitary sewer collection system in Phase 1 of the 19 lot subdivision known as Indian Valley Estates.

hereinafter referred to as the PROJECT; NOW, THEREFORE, the CITY and J-U-B ENGINEERS, Inc. in consideration of their mutual covenants herein agree in respect as set forth below.

CITY INFORMATION AND RESPONSIBILITIES:

The CITY will provide to J-U-B the data and/or services specified in the AGREEMENT.

In addition, the CITY will furnish to JUB items ...as Stipulated in Attachment 1

SERVICES TO BE PERFORMED BY CONSULTANT:

J-U-B will ...as Stipulated in Attachment 1

SCHEDULE OF SERVICES TO BE PERFORMED:

J-U-B will perform said services within 180 calendar days of the date of this TASK ORDER.

BASIS OF FEE AND BILLING SCHEDULE:

The CITY will pay J-U-B for its services and reimbursable expenses as follows:

...as Stipulated in Attachment 1

File Folder Title: Indian Valley Estates Water-Sewer

Remarks: _____

IN WITNESS WHEREOF, the parties hereto have executed this TASK ORDER AGREEMENT as of the day and year first above written.

CITY: City of Elgin
180 N. 8th Street, PO Box 128
Elgin, OR 97827

CONSULTANT: J-U-B ENGINEERS, Inc.
1201 Adams Ave
La Grande, OR 97850

CITY ADMINISTRATOR APPROVAL:

By: _____

Name/Title: Brock Eckstein, City Administrator

By: Ben Volk

Name/Title: Ben Volk, P.E., Area Manager

MAYOR APPROVAL:

By: _____

Name/Title: Allen Duffy, Mayor

PUBLIC WORKS APPROVAL:

By: _____

Name/Title: Dan Larman, Public Works Supervisor

**J-U-B ENGINEERS, Inc.
AGREEMENT FOR PROFESSIONAL SERVICES**

**FOR
City of Elgin
Indian Valley Estates Water and Sewer – Design and Construction Phase**

Attachment 1 – Scope of Services, Schedule, and Basis of Fee

The Agreement for Professional Services is amended and supplemented to include the following provisions regarding the Scope of Services, Schedule of Services, and the Basis of Fee:

For the purposes of this attachment, 'Agreement for Professional Services' and 'the Agreement' shall refer to the document entitled 'Agreement for Professional Services,' executed between J-U-B and the City of Elgin, to which this exhibit and any other exhibits have been attached.

PROJECT UNDERSTANDING

The City of Elgin (City) is requesting design and construction phase professional services for construction of water and sewer mains and service stubs to be installed by City crews in the Indian Valley Estates Phase 1 development, containing 19 lots, north of Hartford Ln and N 15th St. The project area is approximately 21 acres. J-U-B will provide a design for the domestic water and sanitary sewer infrastructure. The design will be based on the topographic and boundary survey and the phase 1 plat prepared by others and provided to J-U-B in AutoCAD format. The water system will connect to the existing main in N 15th St. and provide a service to each lot with a stub for future connection and a fire hydrant at the north end of Phase 1. The sewer system will connect to an existing manhole in N 15th St. or N 13th St. and provide a service to each lot with a manhole at the north end of Phase 1 for future extension.

This task order provides the scope of services for J-U-B to complete the construction plans and provide assistance during construction.

PART 1 - SCOPE OF SERVICES

- A. **Basic Services** - J-U-B's Basic Services under this Agreement are limited to the following tasks. CLIENT reserves the right to add subsequent phases or related work to the scope of services upon mutual agreement of scope, additional fees, and schedule.

TASK 001 – PROJECT ADMINISTRATION & COMMUNICATION

J-U-B will oversee project tasks and coordinate with the City representatives to manage the scope, schedule, budget, and work plan. Invoices will be prepared and submitted to the City on a monthly basis and include a brief outline of work accomplished during the billing period.

Deliverables:

- (i) Monthly invoices and project status reports.
- (ii) General written and verbal correspondence.

TASK 002 – CONSTRUCTION PLANS AND SPECIFICATIONS

J-U-B will prepare civil construction documents for the water and sewer systems to serve 19 residential lots in accordance with City of Elgin, Oregon Department of Environmental Quality (ODEQ), and Oregon Health Authority (OHA) design requirements. We anticipate that the utilities for phase 1 will be constructed in a single phase. We understand that the City has a preliminary layout for both the water and sewer system, therefore we are anticipating minimal iterations of the alignments. J-U-B will investigate two alternatives for the sewer layout: 1) connecting to an existing manhole at N 15th St. and 2) connecting to an existing manhole at N 13th St. J-U-B will also prepare a preliminary layout of the water system. This task includes one coordination meeting with the City to determine a final layout for both systems. Following this meeting, J-U-B will prepare Agency Review Construction Plans for review by OHA, ODEQ, and the City. Upon receiving agency review comments and City comments, J-U-B will prepare Agency Approved final plans and construction documents with specifications included on the plans and a written response letter for agency approval. We will also provide the City with a material quantities list for the City's use in soliciting material quotes.

Deliverables:

- (i) Preliminary Layout Exhibits for City review, comment and approval. PDF electronic file.
- (ii) Attendance at a meeting with the City to review the Preliminary Layout Exhibits.
- (iii) Agency Review Construction Plans and Specifications for City, OHA, and DEQ review and comment. PDF electronic file.
- (iv) Agency Approved Final Construction Plans with Specifications on the plans and material quantities list. PDF electronic file and three hard-copies, signed and sealed by a Professional Engineer licensed in Oregon. CLIENT will provide plan and material quantities list copies for quote solicitation and will coordinate all quote solicitation and supplier selection.

Assumptions:

- (i) Subdivision plat, topographic, utility, and boundary survey will be completed by others and provided to J-U-B in AutoCAD format.
- (ii) Once a utility alignment layout is approved, any future alterations that require re-work will be subject to scope and fee adjustments and City authorization prior to completion of the plans.
- (iii) For the purpose of determining utility depths, J-U-B will design preliminary roadway centerline profiles. The City shall provide street cross-sections and catch slope criteria. The goal will be for the roadway profiles to approximately follow existing grade. Earthwork and balancing cut/fill quantities is not included. The plans will not include intersection grading, lot grading, nor finished grade contours. Design of final roadway profiles and intersection/lot grading is recommended prior to roadway construction.
- (iv) Construction work is to be performed by City crews.
- (v) A bid package is not required by the City and will not be prepared by J-U-B.
- (vi) Full Size construction plans will be 11x17 documents.
- (vii) If necessary, consultation with ODOT is by the City and not included in our scope of services.
- (viii) J-U-B will compile the packet for OHA and ODEQ review to include the Plans,

Specifications, and Material Quantities. Any additional documents required by the review agencies will be provided by the City or require a scope increase.

- (ix) The City will pay all necessary review fees to OHA and ODEQ.
- (x) Design will be based on City construction standards.
- (xi) Oregon Standard Specifications for Construction and Standard Drawings will be used.
- (xii) All required permits will be completed by the City, including all fees and costs.
- (xiii) Construction staking and control will be provided by the City.
- (xiv) It is anticipated that there is adequate fall and elevation to utilize a gravity sewer collection system. The design of a pressure sewer system including a lift station is not included.
- (xv) Domestic water system design will include horizontal pipe alignments, valves and fittings, service connections, fire hydrants, and sewer crossing details. It is assumed that a downstream domestic water main can provide adequate flow and pressures to this proposed development. It is also assumed that no booster pumps are required for this project.
- (xvi) Location for fire hydrants, blow-offs, and isolation valves to be determined by the City.
- (xvii) Per City direction, the water main and sewer main pipe size is to be 8-inch diameter.
This scope does not include sizing or capacity analysis.
- (xviii) Groundwater investigation and a dewatering plan are not included.
- (xix) Roadway, storm drainage, landscape, irrigation, lighting, signage, striping, and utility design and coordination are not included.
- (xx) A traffic control plan is not included.
- (xxi) An engineer's opinion of probable construction cost is not included.
- (xxii) No evaluation for providing water and sewer service to Phase 2 or other future developments is included.
- (xxiii) Right of way or utility easement legal descriptions and exhibits are not included.
- (xxiv) Geotechnical investigations or evaluations are not included.
- (xxv) Construction stormwater permitting and erosion and sediment control plans are not included.
- (xxvi) Environmental and/or hazardous materials review, documentation, evaluations, etc. are not included.

TASK 003 – CONSTRUCTION PHASE SERVICES

J-U-B will assist the City with administration of the project. J-U-B will review submittals and assist the City in conducting walkthrough punch list items and project close out. J-U-B will respond to questions and provide clarifications/interpretations as needed. J-U-B will prepare record drawings based on a marked-up set of construction plans provided by the City.

Deliverables:

- (i) Submittal reviews
- (ii) Assistance with project closeout documentation, including final punch list items.
- (iii) Record Drawings.

Assumptions:

- (i) Construction Observation will be completed by the City. J-U-B will not provide an on-

site project representative. No field visits are anticipated by J-U-B.

- (ii) Permitting, audits, environmental documentation is not included.
- (iii) Professional services for claims and/or disputes during legal remedies (arbitration and/or court) are not included.
- (iv) Record drawings will be prepared based on a redline markup set of plans provided by the City. Preparation of record drawings based on survey data is not included.

B. **CLIENT's Responsibilities** – CLIENT is responsible for completing, authorizing J-U-B to complete as Additional Services, or authorizing others to complete all tasks not specifically included above in J-U-B's Basic Services that may be required for the project, including, but not limited to:

1. Provide topographic and boundary survey and final plats in CAD file format for the Indian Valley Estates phase 1 subdivision upon NTP. Topographic survey to include: rim and invert elevation of manholes in N 15th St. and N 13th St., location of existing water main in N 15th St., and location of other existing utilities.
2. Provide record drawings, if available, for existing sewer and water systems at connection points.
3. Provide street cross-sections that will be constructed in the development.
4. Provide direction for location of fire hydrants, blow-offs, and isolation valves.
5. Provide staff as liaisons as required during the progress of the project.
6. Provide prompt notice to J-U-B whenever the CLIENT observes or otherwise becomes aware of the presence at the unknown conditions or items of concern, or of any other development that affects the scope or time of performance of J-U-B's services, or any defect or nonconformance in J-U-B's services, the Work, or in the performance of any Contractor.
7. Provide reviews, approval, and permits to all governmental authorizations having jurisdiction to approve the Project.
8. Request and coordinate materials quote solicitation.
9. Provide redline as-built of construction plans showing any changes during construction.

PART 2 - SCHEDULE OF SERVICES

- A. The following table summarizes the anticipated schedule for the identified Basic Services predicated upon timely receipt of CLIENT-provided information, typical review periods, and active direction during work. CLIENT acknowledges that J-U-B will not be responsible for impacts to the schedule by events or actions of others over which J-U-B has no control.

Task Number	Task Name	Anticipated Schedule
001	Project Administration and Communication	Duration of Project
002	Construction Plans & Specifications	Within 8 weeks of NTP and survey/records from the City (excludes review time for state agencies)
003	Construction Phase Services	As needed depending on City crew installation timeline.

J-U-B will make reasonable efforts to complete the services within the anticipated schedule and keep the CLIENT informed on the project schedule. The CLIENT acknowledges that J-U-B will not be responsible for impacts to the schedule by actions of others over which J-U-B has no control. If actions by others affect the anticipated schedule, J-U-B will keep the CLIENT informed of these actions so adjustments can be made, if necessary.

PART 3 - BASIS OF FEE

- A. CLIENT shall pay J-U-B for the identified Basic Services as follows:
1. For Lump Sum fees:
 - a. The portion of the Lump Sum amount billed for J-U-B's services will be based upon J-U-B's estimate of the percentage of the total services actually completed during the billing period.
 2. For Time and Materials fees:
 - a. CLIENT shall pay J-U-B an amount equal to the cumulative hours charged to the Project by each J-U-B employee times that employees' standard billing rate for all services performed on the Project, plus Reimbursable Expenses and J-U-B's Consultants' charges, if any.
- B. The fee types and amounts for each task are presented in the following table.

Task Number	Task Name	Fee Type	Amount
001	Project Administration and Communication	T&M	\$ 2,500
002	Construction Plans & Specifications	T&M	\$ 29,000
003	Construction Phase Services	T&M	\$ 3,500
TOTAL T&M NOT TO EXCEED			\$ 35,000

The Fee Estimate Not to Exceed limit is for the total of all tasks. Fees for individual task will vary based on the level of effort involved, but not the TOTAL. J-U-B will make reasonable efforts to complete the services within the estimated budget and keep the CLIENT informed of progress to that end so that budget or work efforts can be adjusted if found necessary.



J-U-B ENGINEERS, Inc.
AGREEMENT FOR PROFESSIONAL SERVICES

J-U-B ENGINEERS, INC.

Standard Exhibit A – Construction Phase Services

Client
Name: City of Elgin

Project: Indian Valley Estates Water and Sewer

The Agreement for Professional Services dated 09-25-2017 is amended and supplemented to include the following agreement of the parties with respect to Services during the construction phase of the Project.

For the purposes of this exhibit, 'Agreement for Professional Services' and 'the Agreement' shall refer to the document entitled 'Agreement for Professional Services,' executed between J-U-B and CLIENT to which this exhibit and any other exhibits have been attached.

For the purposes of this exhibit, the term 'Contract Documents,' shall be defined as documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between CLIENT and contractor, Addenda (which pertain to the Contract Documents), contractor's bid (including documentation accompanying the bid and any post-bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and J-U-B's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

For the purposes of this exhibit, the term 'Work,' shall be defined as the entire construction or the various separately identifiable parts thereof required to be provided by the construction contractor under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction; all as required by the Contract Documents.

For the purposes of this exhibit, the term 'Site,' shall be defined as lands or areas indicated in the Contract Documents as being furnished by CLIENT upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by CLIENT which are designated for the use of contractor.

CONSTRUCTION PHASE SERVICES

J-U-B shall provide Construction Phase Services as agreed below. There is a "Yes" and "No" box to the left of each Service. If a box is marked "Yes", J-U-B agrees to perform the Service listed. If a box is marked "No", J-U-B undertakes no duty to perform the Service listed. If a duty or a condition of performance is listed below that is a responsibility of CLIENT, CLIENT's agreement to perform the same is assumed.

It is understood and agreed that J-U-B shall not, during the performance of Services, or as a result of observations of the Work in progress, supervise, direct, or have control over contractor(s) Work; nor shall J-U-B have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by contractor(s), for safety precautions and programs incident to the Work of the contractor(s) or for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to contractor(s) furnishing and performing their Work or providing any health and safety precautions required by any regulatory agencies. Accordingly, J-U-B does not guarantee or warrant the performance of the construction contracts by contractor(s) nor assume responsibility of contractor(s) failure to furnish and perform their Work in accordance with the Contract Documents.

The CLIENT agrees that the general contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the CLIENT's contract with the general contractor. The CLIENT also agrees that the CLIENT, J-U-B and J-U-B's subconsultants shall be indemnified by the general contractor in the event of general contractor's failure to assure jobsite safety and shall be named as additional insureds under the general contractor's policies of general liability insurance.

Construction Phase

After receiving written authorization from CLIENT to proceed with the construction phase, J-U-B may provide the following Services with respect to this part of the Project:

- ☒ Yes 1. *General Administration of the Contract Documents.* Consult with, advise, and assist CLIENT in J-U-B's role as CLIENT's representative. Relevant J-U-B communications with contractor shall be imputed to the CLIENT. Nothing contained in this Standard Exhibit A creates a duty in contract, tort, or otherwise to any third party; but, instead, the duties defined herein are performed solely for the benefit of the CLIENT. CLIENT shall agree to include this language in any such agreements it executes with contractor, subcontractors or suppliers.
- ☐ No
- ☐ Yes 2. *Pre-Construction Conference.* Participate in a pre-construction conference.
- ☒ No

3. *Visits to Site and Observation of Construction / Resident Project Representative (RPR) Services.* In connection with observations of the Work while it is in progress:

☐ Yes

☒ No

a. *Periodic Site Visits by J-U-B.* Make visits to the Site at intervals appropriate to the various stages of construction, as J-U-B deems necessary, to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to J-U-B in this Agreement, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on J-U-B's exercise of professional judgment as assisted by the RPR, if any. Based on information obtained during such visits and observations, J-U-B will determine in general, for the benefit of CLIENT, if the Work is proceeding in accordance with the Contract Documents, and J-U-B shall keep CLIENT informed of the progress of the Work.

☐ Yes

☒ No

b. *Resident Project Representative ("RPR").* When requested by CLIENT, provide the Services of a RPR at the Site to provide more extensive observation of the Work. Duties, responsibilities, and authority of the RPR, are as set forth in the section entitled Resident Project Representative, herein. Through more extensive observations of the Work and field checks of materials and equipment by RPR, J-U-B shall endeavor to provide further protection to the CLIENT against defects and deficiencies in the Work. The furnishing of such RPR's Services will not extend J-U-B's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.

☐ Yes

☒ No

4. *Defective Work.* Recommend to CLIENT that the Work be disapproved and rejected while it is in progress if J-U-B believes that such Work does not conform generally to the Contract Documents or that the Work will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

☒ Yes

☐ No

5. *Clarifications and Interpretations; Field Orders.* Recommend to CLIENT necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Based on J-U-B's recommendations, CLIENT may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

☐ Yes

☒ No

6. *Change Orders, and Work Change Directives.* Recommend to CLIENT Change Orders or Work Change Directives, as appropriate, and prepare required documents for CLIENT consideration. CLIENT may issue Change Orders or Work Change Directives authorizing variations from the requirements of the Contract Documents.

☒ Yes

☐ No

7. *Shop Drawings and Samples.* Review or take other appropriate action in respect to Shop Drawings, Samples, and other data that contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.

☒ Yes

☐ No

8. *Substitutes.* Consult with and advise CLIENT concerning, and determine the acceptability of, substitute materials and equipment proposed by contractor.

☐ Yes

☒ No

9. *Inspections and Tests.* Make recommendations to CLIENT concerning special inspections or tests of the Work, and the receipt and review of certificates of inspections, testing, and approvals required by laws and regulations and the Contract Documents (but only to determine generally that the results certified indicate compliance with the Contract Documents).

- ☐ Yes
☒ No
10. *Disagreements between CLIENT and Contractor.* Assist CLIENT in rendering formal written decisions on claims of CLIENT and contractor relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work. In assisting in such decisions, J-U-B shall not be liable in connection with any decision rendered in good faith.
- ☐ Yes
☒ No
11. *Applications for Payment.* Based on J-U-B's on-site observations as an experienced and qualified design professional, and upon written request of CLIENT, review Applications for Payment and the accompanying supporting documentation. Assist CLIENT in determining the amounts owed to contractor and, if requested by CLIENT, recommend in writing to CLIENT that payments be made to contractor in such amounts. Such recommendations of payment will constitute a representation to CLIENT that, to the best of J-U-B's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, and subject to any subsequent tests called for in the Contract Documents or to any other qualification stated in the recommendation), and the conditions precedent to contractor's being entitled to such payments appear to have been fulfilled insofar as it is J-U-B's responsibility to observe the Work. In the case of unit price Work, J-U-B's recommendation of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Contract Documents). By recommending any payment and after reasonable inquiry, J-U-B shall not thereby be deemed to have represented that exhaustive, continuous, or detailed reviews or examinations have been made by J-U-B to check the quality or quantity of the Work as it is furnished and provided beyond the responsibilities specifically assigned to J-U-B in this Agreement and the Contract Documents. J-U-B's review of the Work for the purposes of recommending payments will not impose on J-U-B the responsibility to supervise, direct, or control such Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or contractor's compliance with laws and regulations applicable to its furnishing and performing the Work. J-U-B's review will also not impose responsibility on J-U-B to make any examination to ascertain how or for what purposes contractor has used monies paid to contractor by CLIENT; to determine that title to any of the Work, including materials or equipment, has passed to CLIENT free and clear of any lien, claims, security interests, or encumbrances; or that there may not be other matters at issue between CLIENT and contractor that might affect the amount that should be paid.
- ☒ Yes
☐ No
12. *Contractor's Completion Documents.* Receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals, Shop Drawings, Samples, other data approved, and the annotated record documents which are to be assembled by contractor in accordance with the Contract Documents (such review will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspection, tests, or approvals indicates compliance with, such Contract Documents); transmit them to CLIENT with written comments.
- ☐ Yes
☒ No
13. *Substantial Completion.* Promptly after notice from CLIENT that contractor considers the Work for this part of the Project is ready for its intended use, in company with CLIENT and contractor, conduct a site visit to determine if the Work is substantially complete. Provide recommendation to CLIENT relative to issuance of Certificate of Substantial Completion.
- ☐ Yes
☒ No
14. *Final Notice of Acceptability of the Work.* Assist CLIENT in conducting a final inspection to determine if the completed Work is acceptable so that J-U-B may recommend, in writing, that final payment be made to contractor.
- ☒ Yes
☐ No
15. *Additional Tasks.* Perform or provide the following additional construction phase tasks or deliverables as delineated in Attachment 1 – Scope of Services and/or Schedule and/or Basis of Fee, which is included with the Agreement.

General Limitation of Responsibilities. J-U-B shall not be responsible for the acts or omissions of any contractor or of any of their subcontractors, suppliers, or any other individual or entity performing or furnishing any of the Work. J-U-B shall not be responsible for failure of any contractor to perform or furnish the Work in accordance with the Contract Documents. CLIENT shall agree to include this language in any such agreements it executes with contractor, subcontractors or suppliers.

J-U-B's Construction Phase Services will be considered complete on the date of Final Notice of Acceptability of the Work.

Post-Construction Phase

After receiving authorization from CLIENT to proceed with the post-construction phase, J-U-B may:

- ☐ Yes 1. *Testing/Adjusting Systems.* Provide assistance in connection with the testing and adjusting of equipment or systems.
☒ No
- ☐ Yes 2. *Operate/Maintain Systems.* Assist CLIENT in coordinating training for CLIENT's staff to operate and maintain equipment and systems.
☒ No
- ☐ Yes 3. *Control Procedures.* Assist CLIENT in developing procedures for control of the operation and maintenance of, and recordkeeping for, equipment and systems.
☒ No
- ☐ Yes 4. *O&M Manual.* Assist CLIENT in preparing operating, maintenance, and staffing manuals.
☒ No
- ☐ Yes 5. *Defective Work.* Together with CLIENT, visit the Project to observe any apparent defects in the Work, assist CLIENT in consultations and discussions with contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
☒ No
- ☐ Yes 6. *Record Surveying.* Provide field surveying of readily accessible elements of the final completed construction to supplement the preparation of Record Drawings.
☒ No
- ☒ Yes 7. *Record Drawings.* Furnish a set of reproducible prints of Record Drawings showing significant changes made during the construction process, based on the annotated record documents for the Project furnished by the contractor.
☐ No
- ☐ Yes 8. *Warranty Inspection.* In company with CLIENT or CLIENT's representative, provide an inspection of the Project within one month before the end of the contractor correction period to ascertain whether any portion of the Work is subject to correction.
☒ No
- ☐ Yes 9. *Additional Tasks.* Perform or provide the following additional post-construction phase tasks or deliverables as listed in Attachment 1 - Scope of Services and/or Schedule and/or Basis of Fee, which is included with the Agreement.
☒ No

The Post-Construction Phase Services may commence during the construction phase and, if not otherwise modified by the mutual agreement of CLIENT and J-U-B, will terminate at the end of the correction period.

CONSTRUCTION PHASE ADDITIONAL SERVICES

If authorized by CLIENT and expressly agreed by J-U-B; or, if performed by J-U-B with the knowledge of the CLIENT after the signing of the Agreement for Professional Services, J-U-B shall furnish or obtain from others Additional Services of the types listed in this paragraph:

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by CLIENT if the resulting change in compensation for Construction Phase Services is not commensurate with the Services rendered; Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by contractor and Services after the award of the contract; Services in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor; and Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of material equipment, or energy shortages.
2. Services involving out-of-town travel required of J-U-B other than visits to the Site or CLIENT's office.
3. Assistance in connection with bid protests, rebidding, or renegotiating the Construction Agreement.
4. Services in connection with any partial utilization of the Work by CLIENT prior to Substantial Completion.
5. Additional or extended Services during construction of the Work made necessary by (a) emergencies or acts of God endangering or delaying the Work, (b) the discovery of constituents of concern, (c) Work damaged by fire or other cause during construction, (d) a significant amount of defective Work, (e) acceleration of the progress schedule involving Services beyond normal working hours, and (f) default by contractor, including extensions of the construction period.
6. Evaluating an unreasonable number of claims submitted by contractor or others in connection with the Work.
7. Protracted or extensive assistance in refining and adjusting any equipment or system (such as initial startup, testing, adjusting, and balancing).
8. Services or consultations after completion of the construction phase, such as excessive inspections during any correction period and reporting observed discrepancies under guarantees called for in the Construction Agreement for the Work (except as agreed to under Construction Phase Services).
9. Preparing to serve or serving as a consultant or witness for CLIENT in any litigation, arbitration, or other legal or administrative proceeding involving the Project to which J-U-B has not been made a party.
10. Additional Services in connection with the Work, including Services which are to be furnished by CLIENT and Services not otherwise provided for in this Agreement.

RESIDENT PROJECT REPRESENTATIVE

If provided as part of Construction Phase Services, J-U-B shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist J-U-B in observing progress and quality of the Work. The RPR, assistants, and other field staff may provide full-time representation or may provide representation to a lesser degree.

Through such additional observations of the Work and field checks of materials and equipment by the RPR and assistants, J-U-B shall endeavor to provide further protection for CLIENT against defects and deficiencies in the Work. It is understood and agreed that J-U-B shall not, during the performance of Services, or as a result of observations of the Work in progress, supervise, direct, or have control over contractor(s)' Work; nor shall J-U-B have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by contractor(s), for safety precautions and programs incident to the Work of the contractor(s) or for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to contractor(s) furnishing and performing their Work or providing any health and safety precautions required by any regulatory agencies. Accordingly, J-U-B does not guarantee or warrant the performance of the construction contracts by contractor(s) nor assume responsibility of contractor(s)' failure to furnish and perform their Work in accordance with the Contract Documents.

The RPR's duties under this Agreement shall be strictly limited to the following:

1. *General.* RPR is J-U-B's agent at the Site, will act as directed by and under the supervision of J-U-B, and will confer with J-U-B regarding RPR's actions.
2. *Schedules.* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by contractor and consult with CLIENT concerning acceptability of such schedules.
3. *Conferences and Meetings.* When requested by CLIENT to do so, attend meetings with contractor, such as preconstruction conferences, progress meetings, job conferences, and other project-related meetings.
4. *Liaison.* Serve as J-U-B's liaison with CLIENT.

5. *Interpretation of Contract Documents.* Report to CLIENT when clarifications and interpretations of the Contract Documents are needed.
6. *Shop Drawings and Samples.* Receive and record date of receipt of reviewed Samples and Shop Drawings.
7. *Modifications.* Consider and evaluate contractor's suggestions for modifications to Drawings or Specifications and report, with RPR's recommendations, to CLIENT. Transmittal to contractor of written decisions as issued by J-U-B will be in writing.
8. *Review of Work and Rejection of Defective Work.*
 - a) Conduct on-site observations of the Work to assist J-U-B in determining if the Work is, in general, proceeding in accordance with the Contract Documents.
 - b) Report to CLIENT whenever RPR believes that any part of the Work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents; has been damaged; or does not meet the requirements of any inspection, test, or approval required to be made. Advise CLIENT of that part of the Work that RPR believes should be corrected, rejected, or uncovered for observation, or that requires special testing, inspection, or approval.
9. *Inspections, Tests, and System Startups.*
 - a) Advise CLIENT in advance of scheduled major inspections, tests, and system start-ups for important phases of the Work.
 - b) Verify that tests, equipment, and system start-ups and operating and maintenance training is conducted in the presence of appropriate personnel and that contractor maintain adequate records thereof.
 - c) Observe, record, and report to CLIENT appropriate details relative to the test procedures and system start-ups.
 - d) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to CLIENT.
10. *Records.*
 - a) Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, J-U-B's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals, and other Project-related documents.
 - b) Prepare a daily report or keep a diary or log book, recording contractor's and subcontractors' hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; furnish copies of such records to CLIENT.
 - c) Maintain accurate, up-to-date lists of the names, addresses, e-mail addresses, and telephone numbers of all contractors, subcontractors, and major suppliers of materials and equipment.
 - d) Maintain records for use in preparing documentation of the Work.
 - e) Upon completion of the Work with respect to the Project, furnish a complete set of all RPR Project documentation to CLIENT.

11. *Reports.*

- a) Furnish to CLIENT periodic reports as required of progress of the Work and of contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b) Present to CLIENT proposed Change Orders, Work Change Directives, and Field Orders.
- c) Furnish to CLIENT copies of all inspection, test, and system startup reports.
- d) Report immediately to CLIENT the occurrence of any Site accidents, emergencies, acts of God endangering the Work, property damaged by fire or other causes, and the discovery or presence of any constituents of concern.

12. *Payment Request:* Review Applications for Payment for compliance with the established procedure for their submission and forward with recommendations to CLIENT, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site, but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals.* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals, and other data required by the Specifications to be assembled and furnished by contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to CLIENT for review.

14. *Completion.*

- a) Before issuing a Certificate of Substantial Completion, submit to CLIENT a list of observed items requiring completion or correction.
- b) Observe whether contractor has arranged for inspections required by laws and regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Project.
- c) Participate in a final inspection in the company of CLIENT and contractor and prepare a final list of items to be completed or corrected with respect to the Work.
- d) Observe whether all items on final list have been completed or corrected and make recommendations to CLIENT concerning acceptance and issuance of CLIENT's Final Notice of Acceptability of the Work.

The RPR shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of J-U-B's authority as set forth in the Agreement for Professional Services .
- 3. Undertake any of the responsibilities of contractor, subcontractors, suppliers, or contractor's superintendent.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction or of the Work, unless such advice or directions are specifically required by the Contract Documents.
- 5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of CLIENT or contractor.
- 6. Participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized.
- 7. Accept Shop Drawing or Sample submittals from anyone other than J-U-B.
- 8.. Authorize CLIENT to occupy the Work in whole or in part.

CLIENT'S RESPONSIBILITIES

Except as otherwise provided herein or in the Agreement for Professional Services, CLIENT shall do the following in a timely manner so as not to delay the Services of J-U-B and shall bear all costs incident thereto:

1. Provide, as may be required for the Project, such legal services as CLIENT may require or J-U-B may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by contractor.
2. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and Substantial Completion, final payment, and other inspections.
3. Give prompt written notice to J-U-B whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of J-U-B's Services, or any defect or nonconformance in J-U-B's Services or in the Work of any contractor.
4. Render all final decisions related to: 1) changes or modifications to the terms of the construction contract, 2) acceptability of the Work, and 3) claims or Work stoppages.
5. Unless included in J-U-B Scope of Services, provide construction staking and materials testing services for the project.

The Client agrees to require all contractors of any tier to carry statutory Workers Compensation, Employers Liability Insurance and appropriate limits of Commercial General Liability Insurance (CGL). The Client further agrees to require all contractors to have their CGL policies endorsed to name the Client, the Consultant and its sub-consultants as Additional insureds, on a primary and noncontributory basis, and to provide Contractual Liability coverage sufficient to insure the hold harmless and indemnity obligations assumed by the contractors. The Client shall require all contractors to furnish to the Client and the Consultant certificates of insurance as evidence of the required insurance prior to commencing work and upon renewal of each policy during the entire period of construction. In addition, the Client shall require that all contractors will, to the fullest extent permitted by law, indemnify and hold harmless the Client, the Consultant and its sub-consultants from and against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the Project, including all claims by employees of the contractors.

INDEMNIFICATION

In addition to any other limits of indemnification agreed to between the Parties, CLIENT agrees to indemnify and hold harmless J-U-B, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work. This is to include, but not to be limited to any such claim, cost, loss, or damage that is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom to the extent caused by any negligent act or omission of contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, as well as any general, special or other economic damages resultant from Work stoppages or delays that are caused in whole or part by J-U-B's exercise of the rights and duties as agreed herein (Construction Phase Services).

CLIENT agrees that CLIENT will cause to be executed any such agreements or contracts with contractors, subcontractors or suppliers to effectuate the intent of this part before any Work is commenced on the Project; if CLIENT negligently fails to do so, CLIENT agrees to fully indemnify J-U-B from any liability resulting therefrom, to include, but not to be limited to, all costs relating to tendering a defense to any such claims made.

CITY OF ELGIN, OREGON ORDINANCE 5 (2018)

AN ORDINANCE GRANTING TO EASTERN OREGON NET, INC. / PRIORITY ONE TELECOMMUNICATIONS, INC. A FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF ELGIN, OREGON.

WHEREAS: EASTERN OREGON NET, INC. / PRIORITY ONE TELECOMMUNICATIONS, INC., (hereinafter "Franchisee") provides Telecommunications Services within the City of Elgin, Oregon (hereinafter the "City");

WHEREAS: Pursuant to Federal law, State statutes, and City Charter and local ordinances, the City is authorized to grant non-exclusive franchises to occupy Rights of Way in order to erect, construct, operate, repair and maintain a Telecommunications Network within the municipal boundaries of the City of Elgin ("Franchise Area"); and

WHEREAS: Franchisee has applied to the City for a Telecommunications Franchise, and the City has reviewed said application and has determined that it meets the requirements of the City's Ordinance subject to the terms and conditions stated herein:

NOW THEREFORE, THE CITY OF ELGIN ORDAINS AS FOLLOWS:

Gross Revenues: Any and all revenue derived from Telecommunications Services, of any kind, nature, or form, without deduction for expense in the City and is further defined in Section 10. All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from internet access services while prohibited by law.

Rights-of-Way: the present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including Rights-of-Way held in fee, or by virtue of an easement or dedication.

Telecommunications: the transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Network: infrastructure owned by Franchisee utilizing one or more facilities located within the City's Rights-of-Way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, necessary and convenient to the provision of Telecommunications Service.

Telecommunications Service: The offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities' used.

Section 2: Grant of Franchise. The City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive right, privilege, authority and Franchise to erect, construct, operate, repair and maintain in, under, upon, along, across and over the City's Rights-of-Way, its lines, poles, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment,

for the purposes of constructing, operating and maintaining a competitive Telecommunications Network within the City.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Rights-of-Way, by Franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and non-discriminatory manner with respect to the rights, privileges and authorities afforded Franchisee.

Section 4: Term and Termination. The term of this Franchise shall be two (2), five (5) year terms, commencing with the effective date of this Ordinance. Thereafter, this Franchise shall continue in full force and effect for an additional two (2), five (5) year terms, unless notice is given by either party ninety (90) days before expiration of the then-current term of its intention to terminate or renegotiate the Franchise. Upon termination or expiration of the Franchise (and any replacement thereof), Franchisee shall, within one hundred and eighty (180) days, remove all its facilities at its own cost. Should the Grantee fail to remove its facilities within the one hundred and eighty day (180) period, the City may remove the Franchisee facilities and charge Franchisee the actual cost thereof.

Section 5: No Limitation of City Authority.

(a) Nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting other franchises for use of Rights-of-Way, or of adopting general ordinances regulating use of or activities in the Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.

(b) In the event that any portion of the Franchisee's infrastructure interferes with any present or future use the City desires to make of its Rights-of-Way, Franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City. Relocations required by a third party (including other franchisees of the City's Rights of Way) shall be paid by such party requesting the relocation.

(c) Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.

(d) Except as otherwise provided by law, and subject to Section 6 herein, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Construction, Maintenance and Repair of Infrastructure.

(a) Franchisee shall register all of its facilities with the Oregon Utility Notification Center/One-Call Center and, upon request by the City, provide such location information as the City may reasonable require to properly manage its Rights of Way.

(b) Franchisee may make all needful excavations in any Right-of-Way for the purpose of placing, erecting, laying, maintaining or repairing Franchisee's infrastructure, and shall repair, renew and replace the same as reasonably possible to the condition that existed prior to such excavation. Franchisee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans to be evaluated by the standards applied to the construction of other similar Telecommunications systems in the City. Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted from time to time by the City, or any other authority having jurisdiction over Rights-of-Way. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction. Franchisee shall provide the City with as-built maps, to avoid future conflicts.

(c) In the event emergency repairs are necessary for Franchisee's facilities, Franchisee may immediately initiate such emergency repairs. Franchisee shall give notice to the City's Department of Public Works by telephone, electronic

data transmittal or other appropriate means as soon as is practicable after commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations, and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

(d) Franchisee shall construct and maintain its Telecommunications system in such a manner so as to not interfere with City sewer or water systems, or other City facilities.

(e) Upon express written permission of the City, Franchisee may trim trees or other vegetation owned by the City or encroaching upon the Right of Way to prevent branches or leaves from touching or otherwise interfering with Franchisee's facilities. All trimming or pruning requested by Franchisee shall be at the sole cost of Franchisee. The Franchisee may contract for said trimming or pruning services with any person approved by the City.

Section 7: Insurance.

(a) General. At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

(b) Evidence Required. Within 30 days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section.

(c) Notice of Cancellation, Reduction, or Material Change in Coverage. Policies shall include a provision requiring written notice by the insurer or insurers to the City not less than 30 calendar days prior to cancellation, in coverage. If insurance coverage is canceled, Franchisee shall, prior to the effective date of such cancellation, , obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

(d) Insurance Required. During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

(1) Workers' compensation insurance for all subject workers; and

(2) General liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each person, and \$3,000,000 for each occurrence of bodily injury and \$1,000,000 for property damage, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise.

Section 8: Transfers and Change in Control.

(a) Transfer. This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent may be withheld by the City in its sole discretion. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give City written notice of the proposed transfer, and shall request consent of the transfer by the City. The City shall have 60 days to act upon any request for approval of a transfer.

(c) The Franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

(d) The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. However, the Telecommunications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

(e) The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

Section 9: Indemnification. The Franchisee agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury, including accidental death, which arise out of Franchisee's construction, operation, or maintenance of its facilities.

Section 10: Compensation.

(a) Franchise Fee. In consideration of permission to use the streets and Rights-of-Way of the City for the construction, operation, and maintenance of a Telecommunications Network within the Franchise Area the Franchise shall pay to City during the term of this Franchise an amount equal to seven percent (7%) of the Franchisee's Gross Revenues ("Franchise Fee"). Any net uncollectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point to point or multi-point services is based on the pro-rata share of the revenue from those services originating or terminating in the Franchise Area. The City represents and warrants that all Telecommunications Franchises ordained by the City contain, and will contain, equivalent Franchise Fee requirements as those contained herein, and will be applied and enforced in a competitively neutral and nondiscriminatory manner.

(b) Modification Resulting from Action by Law. Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the effective date of such repeal or amendment, up to the maximum allowable by law.

(c) Payment of Franchise Fees. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 45 days after such dates. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of Gross Revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

(d) The Franchise Fee includes all compensation for the use of the City's Rights-of-Way. Franchisee may offset against the Franchise Fee the amount of any fee or charge paid to the City in connection with the Franchisee's use of the Rights-of-Way when the fee or charge is not imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of

any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.

Section 11: Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Facilities owned, maintained, or operated by Grantee located within any public Rights-of-Ways of the annexed territory shall be subject to all of the terms of this Ordinance.

Section 12: Right to Inspect Records. In order to manage the Franchisee's use of Rights-of-Way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the Franchisee's Telecommunications Network; the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications Network; the character and extent of the Telecommunications Service rendered therefore to them; and any other related pertinent financial information required for the exercise of any other lawful right of Franchisee under this Franchise. Subject to the Oregon Public Records law, any information that is provided to the City which is marked proprietary and confidential shall not be disclosed or used for any purpose, other than verifying compliance with the terms of this Ordinance, and shall be returned to Franchisee.

Section 13: Right to Perform Franchise Fee Audit or Review; Default. In addition to all rights granted under Section 12, the City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Franchise Fees to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than 3 years after the date on which Franchise Fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City.

Section 14: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's Rights-of-Way.

Section 15: Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Oregon anti-trust law, ORS 646.750-646.836, or the Oregon Unlawful Trade Practices Act, ORS 646.650-646.652. Nothing contained in this section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

Franchisee reserves the right to challenge any applicable federal, state, and local laws, ordinances, and regulations in the future.

Section 16: Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following address or such other address as each party may specify in writing:

City of Elgin Administrator

Address: P.O. Box 180, Elgin, OR 97827

Phone: (541)437-2253

Facsimile: (541)437-0131

Contracts Management

EASTERN OREGON NET, INC. / PRIORITY ONE TELECOMMUNICATIONS, INC.

216 Chestnut St., La Grande, OR 97850

Phone: 541-676-9663

Facsimile: 541-963-2625

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 17: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 18: Severability. If any part of this Franchise becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Franchise. In all other respects this Franchise will stand and remain in full force and effect as if the invalid provision had not been part of this Franchise.

Section 19: Waiver.

(a) The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Franchisee gives written notice of a failure or inability to cure or comply with a provision of this Franchise, and the City fails to object within a reasonable time after receipt of such notice; such provision shall be deemed waived.

Section 20: Emergency. The City Council of Elgin finds the health, safety and welfare of the City requires this Ordinance to have immediate effect. Therefore, the City Council hereby declares the existence of an emergency and this ordinance shall be in full force and effect from the time of its passage and approval.

PASSED AND ADOPTED this 10th day of July, 2018.

With _____ Ayes, _____ Nays, _____ Abstentions, _____ Absent

Signed;

Allan Duffy, Mayor

Mary West, Councilor _____

David Reed, Councilor _____

Rocky Burgess, Councilor _____

Kathy Warren, Councilor _____

Teresa Shaffer, Councilor _____

Risa Hallgarth, Councilor _____

State of Oregon

County of Union

I hereby certify that the foregoing ordinance was passed and approved by the City Council of the City of Elgin Oregon at a regular or special meeting of said Council, held on the 10th day of July 2018.

Certified this _____ day of _____ 20 _____.

Brock Loren Eckstein, Notary Public

My Commission Expires June 7th, 2019

CITY OF ELGIN, OREGON ORDINANCE 6 (2018)
AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC., DBA "LS NETWORKS" AN OREGON CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF ELGIN, OR

WHEREAS: Lightspeed Networks, Inc., an Oregon Corporation, dba LS Networks provides Telecommunications services within the City of Elgin, OR; and

WHEREAS: Franchisee has applied for a Telecommunications Franchise pursuant to local ordinances relating to Telecommunications located in the public rights of way, and the City of Elgin "City" has reviewed said application and has determined that it meets the requirements of the City's Ordinance subject to the terms and conditions stated herein:

NOW THEREFORE, THE CITY OF ELGIN ORDAINS AS FOLLOWS:

Section 1: Definitions.

Gross Revenues: Any and all revenue derived from telecommunications services, of any kind, nature, or form, without deduction for expense in the City of Elgin and is further defined in Section 11. All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from internet access services while prohibited by law.

Rights-of-Way: the present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including Rights-of-Way held in fee, or by virtue of an easement or dedication.

Telecommunications: the transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Network: infrastructure owned by Franchisee utilizing one or more facilities located within the City's Rights-of-Way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, necessary and convenient to the provision of access to the Internet and Telecommunications service.

Telecommunications Service: the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities' uses.

Section 2: Grant of Franchise. The City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive right, privilege, authority and Franchise to erect, construct, operate, repair and maintain in, under, upon, along, across and over the City's Rights-of-Way, its lines, poles, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining a competitive Telecommunications network within the City.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Rights-of-Way, by Franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and non-discriminatory manner with respect to the rights, privileges and authorities afforded Franchisee.

Section 4: Term and Termination. The term of this Franchise shall be ten (10) years, commencing with the effective date of this Ordinance. Thereafter, this Franchise shall continue in full force and effect for an additional ten (10) years unless notice is given by either party ninety (90) days before expiration of its intention to terminate or renegotiate the Franchise. Upon termination or expiration of the Franchise, Grantee shall, within one hundred and eighty days (180), remove all its facilities from the City's Rights-of-Way. Should the Grantee fail to remove its facilities within the one hundred and eighty day period (180), the City may remove.

Section 5: No Limitation of City Authority.

(a) Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting other franchises for use of Rights-of-Way, or of adopting general ordinances regulating use of or activities in the Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.

(b) In the event that any portion of the Franchisee's infrastructure interferes with any present or future use the City desires to make of its Rights-of-Way, Franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(c) Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.

(d) Except as otherwise provided by law, and subject to Section 6 herein, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Competitively Neutral Application. The City shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of Telecommunications services operating within the City. Any requirement imposed on Franchisee that is determined not in compliance with this Section 6 shall be unenforceable against Franchisee.

Section 7: Construction, Maintenance and Repair of Infrastructure.

(a) Franchisee may make all needful excavations in any Right-of-Way for the purpose of placing, erecting, laying, maintaining or repairing Franchisee's infrastructure, and shall repair, renew and replace the same as reasonably possible to the condition that existed prior to such excavation. Franchisee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans (1) to be evaluated by the standards applied to the construction of other similar Telecommunications systems in the City, and (2) maintained by the City as confidential and exempt from public disclosure to the maximum extent allowed by law. Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted from time to time by the City, or any other authority having jurisdiction over Rights-of-

Way. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

(b) In the event emergency repairs are necessary for Franchisee's facilities, Franchisee may immediately initiate such emergency repairs. Franchisee shall give notice to the City's Department of Public Works by telephone, electronic data transmittal or other appropriate means as soon as is practicable after commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations, and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

(c) Franchisee shall construct and maintain its Telecommunications system in such a manner so as to not interfere with City sewer or water systems, or other City facilities.

Section 8: Insurance.

(a) **General.** At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

(b) **Evidence Required.** Within 30 days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section.

(c) **Notice of Cancellation, Reduction, or Material Change in Coverage.** Policies shall include a provision requiring written notice by the insurer or insurers to the City not less than 30 calendar days prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

(d) **Insurance Required.** During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

(1) Workers' compensation insurance for all subject workers; and

(2) General liability insurance with a combined single limit, or the equivalent, of not less than \$500,000 for each person, and \$1,000,000, for each occurrence of bodily injury and \$1,000,000 for property damage, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise.

Section 9: Transfers and Change in Control.

(a) **Transfer.** This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this

Franchise, the Franchisee shall give City written notice of the proposed transfer, and shall request consent of the transfer by the City.

(b) Any transfer of ownership affected without the written consent of the City shall render this Franchise subject to revocation. The City shall have 60 days to act upon any request for approval of a transfer. If the City fails to render a final decision on the request within said 60 days, the request shall be deemed granted unless the Franchisee and the City agree to an extension of time.

(c) The Franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

(d) The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. However, the Telecommunications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

(e) The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

Section 10: Indemnification. Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement.

Section 11: Compensation.

(a) **Franchise Fee.** In consideration of permission to use the streets and Rights-of-Way of the City for the construction, operation, and maintenance of a Telecommunications system within the Franchise area the Franchise shall pay to City during the term of this Franchise an amount equal to three percent (3%) of the Franchisee's Gross Revenues ("Franchise Fee"). Any net uncollectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point to point or multi-point services is based on the pro-rata share of the revenue from those services.

(b) **Modification Resulting from Action by Law.** Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

(c) **Payment of Franchise Fees.** Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 45 days after such dates. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

(d) The Franchise Fee includes all compensation for the use of the City's Rights-of-Way. Franchisee may offset against the Franchise Fee the amount of any fee or charge paid to the City in connection with the Grantee's use of the Rights-of-Way when the fee or charge is not imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.

Section 12: Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Facilities owned, maintained, or operated by Grantee located within any public Rights-of-Ways of the annexed territory shall be subject to all of the terms of this Ordinance.

Section 13: Right to Inspect Records. In order to manage the Franchisee's use of Rights-of-Way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the Franchisee's Telecommunications System; the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications network; the character and extent of the Telecommunications Service rendered therefore to them; and any other related financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its Rights-of-Way, determining compliance with the terms of this Franchise, and verifying the adequacy of Franchisee's Fee payments. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon law:

Section 14: Right to Perform Franchise Fee Audit or Review; Default. In addition to all rights granted under Section 13, the City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Franchise Fees to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than 3 years after the date on which Franchise Fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by State law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights hereunder.

Section 15: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's Rights-of-Way.

Section 16: Limited Waiver of Sovereign Immunity; Venue.

(a) The City may have sovereign or other immunities which might prevent or impair enforcement or enjoyment of the terms of this Franchise. Without making a general waiver, limitation or modification of such sovereign or other immunity, the City hereby expressly grants, in favor of Franchisee, a limited, non-assignable waiver of its immunities for claims arising under this Franchise, it being the intent of the parties that the waivers herein provided shall result in the terms and conditions of this franchise being enforced in a competitively neutral manner.

(b) Venue for any proceeding brought to enforce any term or condition of this Franchise shall be the local Circuit Court for the City; provided, however, that should any proceeding be brought in a federal forum, such proceeding shall be brought in the U.S. District Court of Oregon in Portland, Oregon, with the parties stipulating to trial in Portland, Oregon.

(c) Notwithstanding any applicable statute of limitations or other law, these limited waivers of sovereign immunity shall expire when all obligations under this Franchise have been fully and completely performed, or the passage of twenty-four months from the termination of this Franchise, whichever is later.

Section 17: Limitation of Liability. The City and the Franchisee agree that neither shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise, or any part hereof, is determined or declared to be invalid.

Section 18: Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Oregon anti-trust law, ORS 646.750-646.836, or the Oregon Unlawful Trade Practices Act, ORS 646.650-646.652. Nothing contained in this section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

Section 19: Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following address, or such other address as each party may specify in writing:

Brock Eckstein

City Administrator

180 N 8th Ave

Elgin, OR 97827

Phone: (541) 437-2253

Facsimile: (541) 437-0131

Contracts Management

LS Networks

921 SW Washington Street, Suite 370

Portland, OR 97205

Phone: (503) 294-5300

Facsimile: (503) 227-8585

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 20: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 21: Severability. If any part of this Franchise becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Franchise. In all other respects this Franchise will stand and remain in full force and effect as if the invalid provision had not been part of this Franchise.

Section 22: Waiver.

(a) The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Franchisee gives written notice of a failure or inability to cure or comply with a provision of this Franchise, and the City fails to object within a reasonable time after receipt of such notice, such provision shall be deemed waived.

PASSED AND ADOPTED this 10th day of July, 2018.

With _____ Ayes, _____ Nays, _____ Abstentions, _____ Absent

Signed;

Allan Duffy, Mayor

LightSpeed Networks, Inc.

By _____

Michael Weidman

President and CEO

Mary West, Councilor _____

David Reed, Councilor _____

Rocky Burgess, Councilor _____

Kathy Warren, Councilor _____

Teresa Shaffer, Councilor _____

Risa Hallgarth, Councilor _____

State of Oregon

County of Union

I hereby certify that the foregoing ordinance was passed and approved by the City Council of the City of Elgin Oregon at a regular or special meeting of said Council, held on the 10th day of July 2018.

Certified this _____ day of _____ 20 _____.

Brock Loren Eckstein, Notary Public

My Commission Expires June 7th, 2019